IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 96 of 2004

JAYANTI LAL
V/S
STATE & ORS

Mr. MANISH SHISHODIA, for the appellant / petitioner

Mr. HR SONI, A.G.A., for the respondent

Date of Order : 3.11.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

Vide order dt. 1.3.2005 notices were issued to the respondent, as it was contended by the learned counsel for the appellant, that vide order dt. 27.8.2001 learned lower Appellate Court has registered the appeal, which was ex-facie barred by time, subject to objection of limitation. Thereafter, present appellant raised the objection by specifically filing the reply to the application under Section 5 of the Limitation Act, and still without deciding the question of limitation, appeal has been allowed.

Learned counsel for the respondent submits that reply to the application was filed but then from perusal of the impugned judgment, it does not transpire that the objection of limitation was at all argued while arguing the appeal. Vide order dt. 27.8.2001 the appeal was registered

subject to objection, and thereafter of course reply to the application under Section 5 was filed, but then, the objection about limitation was never pressed into service, probably realising the inherent weakness of the case of the plaintiff, about having initiated litigation after around 40 years of time.

I have considered the submission. I find force in the submission of the learned counsel for the respondent. Significantly in the present appeal not a word has been said by the appellant, that at the time of hearing of the appeal the objection was ever raised, and that objection was not considered by the learned lower Appellate Court. Thus, in my view, it cannot be said that the learned lower Appellate Court was in error in deciding the appeal on merits.

Then, I have heard the learned counsel on the merits of the case.

Learned trial court had decreed the suit holding the plaintiff to be entitled to terminal benefits, consequent upon voluntary retirement. Suffice it to say firstly, that the trial proceeded exparte, for whatever reason, but then, a look at the plaint shows, that even according to the plaintiff he was appointed on 3.3.1928, and in 1952 on completion of 24 years of service he applied

for voluntary retirement, on which request he was relieved. It is required to be comprehended, that if the request of employee for voluntary retirement is accepted, an order is passed, and communication is addressed to the employee, but then no such communication has been produced on record. This is one aspect of the matter. The other aspect of the matter is, that even according to the plaintiff he was relieved way back in 1952, while the suit has been filed as late as on 4.6.1993, and nothing has been shown as to how the suit is within time, and the learned trial court has not adverted itself towards this aspect of the matter at all, despite the clear provisions of section 3 of the Limitation Act, and a decree has been passed holding the plaintiff to be entitled to terminal benefits for all this period of 40 years. The learned lower Appellate Court has also considered, that according to Rules, which were then prevalent, a person rendering less than 25 years service was not even entitled to any voluntary retirement, and therefore, according to the Rules then prevailing, the plaintiff is not entitled to the benefits claimed in the suit. Learned counsel for the appellant has not been able to show as to how this legal position considered by the learned lower Appellate Court is wrong. With this it is also significant to note, that in para- 5 and 6, the plaintiff has clearly alleged that he was not paid terminal benefits as he was treated to have resigned. Then, in para- 10 again he has pleaded that the plaintiff time and again

requested for giving the copy of the resignation but that was not given. I find on record an un-exhibited document, available on record at page C-28/2, being letter from S.P. Banswara dt. 13.4.1993, conveying that endorsement of resignation is there in the service book, and the record of the Ex P.S.I. of the year 1952 is not available, except only service book. Obviously if the man has resigned way back in 1952, the employer is not supposed to preserve the record ad infinitum. Likewise, from the above referred pleading of the plaintiff it is clear, that the plaintiff was conveyed that he was not being paid the terminal benefits as he had resigned, and it is not shown by the plaintiff as to when was he so informed, and as to how the suit is within time, from the date of first communication to him, about his being not entitled to terminal benefits on account of having resigned. In this very sequence a look at the notice given under Section 80 C.P.C. shows, that therein in para-5 it is clearly alleged that the plaintiff was refused terminal benefits on the ground that he was treated to have resigned.

Thus, considering from any stand point, I do not find any error in the findings recorded by the learned lower Appellate Court, and in addition I feel that the present litigation is rather a gravest abuse of the process of the law on the part of the plaintiff, in attempting to fleece the government administration by initiating

litigation after 40 years of resignation, with cooked up stories about voluntary retirement, and as the things had it, the learned trial court fell easy prey to the designs of the plaintiff. Be that as it may.

I do not find any force in the appeal. The same is, therefore, dismissed.

(N P GUPTA),J.

/Sushil/